

Chapter 1751. Administration

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Sec. 1751-1. LDC Review

1751-1.1. ~~What is subject to LDC review?~~Applicability

- A. All changes in the use of real property and ~~improvements to~~ development of real property that requires a building permit or a ~~zoning-~~ certificate of compliance must be reviewed by the Department ~~of City Planning and Buildings ("DCPB")~~ for compliance with the ~~Land Development Code ("LDC")~~. Changes in the use of real property and ~~improvements to~~ development of real property that requires a building permit is set forth in the Cincinnati Building Code, Title XI of the Cincinnati Municipal Code. ~~Changes in the use of real property and improvements to real property that require a certificate of compliance are as follows:~~

1. ~~[TO BE COMPLETED]~~

1751-1.2. ~~How can I verify how my property is zoned?~~Certificates of Compliance

- A. ~~A person may apply to the Director for a determination that a proposed use or development of a building or a property conforms to the LDC.~~
- B. A ~~Zoning Verification~~ certificate of compliance confirms ~~whether a proposed use or development of a building or a property conforms to the LDC - the zoning district and the allowed use of a building or a property.~~ It does not approve the use or development of the building or property.
- C. The Director may only issue a ~~Zoning Verification~~ certificate of compliance if the intended use or development ~~of a building or a property is permitted under the LDC.~~
- D. A certificate of compliance is required for the following uses and development:
1. Front yard parking areas of less than 800 square feet.
 2. Fences in excess of six feet in height.
 3. Mural signs.

1751-1.3. Site Plan Review

A. ~~What is a site plan review meeting?~~Site Plan Review Meeting

1. A site plan review meeting is an in-person meeting or meetings between the applicant, Department staff and representatives of other internal or external agencies and departments necessary to consider the applicant's application.
2. ~~The meeting shall take place at the Permit Center at a mutually agreeable time.~~ The purpose of a site plan review meeting is to discuss ways for a proposed site plan to comply with the LDC, and if full compliance cannot be achieved, ways to obtain the necessary relief from the LDC.

B. ~~When does site plan review apply?~~Site Plan Review Required

1. An application for a building permit or ~~zoning-~~ certificate of compliance requires a site plan review meeting with Department staff if the application concerns:
 - a. increases in the number of dwelling units for residential uses other than single-family detached dwellings
 - b. increases in existing building footprint or impervious coverage of the site of 10% or more
 - c. changes in use of an existing building or structure; or a significant change to the exterior of the building, or group of buildings, including but not limited to facade changes, replacement of exterior materials such as siding, change in roof lines and materials, structural changes such as removal, replacement or addition of doors or windows
 - d. the establishment of an ~~off-premise sign~~ outdoor advertising sign
 - e. any development or use, funded in whole or in part by involving city funds

2. An application for a building permit or ~~zoning~~ certificate of compliance does not require a site plan review meeting prior to Department staff making a final determination about LDC compliance if the application concerns:
 - a. single-family detached dwellings and their related accessory uses and structures;
 - b. changes in use that are less intensive than the previous use or which, by code, require less off-street parking;
 - c. home occupations;
 - d. temporary uses; and
 - e. accessory or secondary dwelling units.

1751-1.4. ~~When will my application be reviewed?~~ Application Review

- A. ~~Department staff will review a complete building permit or certificate of compliance application for LDC compliance within~~ Not later than 10 days after a complete building permit or zoning certificate of compliance application is received by the Department, ~~as determined by Department staff, it will be reviewed for LDC compliance.~~
- B. If an application requires a site plan review meeting, Department staff will contact the applicant to schedule a meeting ~~within 15 days~~ following the City's receipt of the complete application.

1751-1.5. ~~What if my application fully complies with the LDC?~~ Compliant Applications

If an application is fully compliant with the LDC, then Department staff will make a notation of LDC approval in the Department's ~~electronic permitting system records~~ and the approval will be noted on the building permit or other permit or certificate issued to the applicant.

1751-1.6. ~~What if my application does not comply with the LDC?~~ Noncompliant Applications

- A. If an application is not compliant with the LDC in all respects, ~~then~~ Department staff will notify the applicant in writing, specifying the specific sections of the LDC with which the application fails to comply.
- B. Upon receiving a non-compliance letter, the applicant may either
 1. Amend the application to fully comply with the LDC, or
 2. Seek administrative or legislative relief from the LDC.
- C. The applicant must elect to amend or seek relief within 30 days of the date of the non-compliance letter, ~~or the application will expire~~. The Director may grant extensions of the 30-day time limit ~~for the application to make an election, on written request, may applied~~ for good cause shown and without any notice or hearing, A request for extension must be submitted to the Director in writing and prior to the expiration of the 30-day time limit.
- D. Failure to correct a non-compliant application within the required time limit is a basis for denial of the application.

1751-1.7. Director's authority to administer the LDC

- A. The Director is authorized to take all actions reasonably necessary to administer the LDC.
- B. The Director is specifically authorized to take the following actions necessary for the administration of the LDC:
 - 1. To establish fees to provide for the reasonable cost of the administration of the LDC.
 - 2. To establish forms and instructions for requesting reviews and approvals required by the LDC.
 - 3. To delegate the authority granted under this Section to Department staff.

Sec. 1751-2. Relief

1751-2.1. ~~How can I get relief from the application of the LDC?~~Administrative Relief

Applications that are not fully compliant with the LDC may qualify for the following types of administrative relief: ~~Some applications will not be fully compliant with the LDC. For those applications, administrative relief from the application of the LDC may be appropriate. In other instances, legislative action may be appropriate. The Director shall inform the applicant what relief is available to it not later than 10 days following his or her final determination on LDC compliance.~~

A. Minor Relief

~~If an application requires a minor use permit (FBC only), minor area variance, or administrative variation (FBC only), then the applicant shall petition the Director for administrative relief and the Director shall make a determination without a public hearing within 10 days of the date of the petition.~~

If an application requires minor relief, which includes minor area variances, reasonable accommodations, use determinations, and permissions for multiple principle uses or structures on a lot, then the applicant shall petition the Director and the Director shall make a determination on the petition in accordance with Sec. 1751-3 below.

Minor area variances are set forth on Table 1751-3.G. All other area variances shall be considered a major area variance for the purposes of the LDC.

B. Major Relief

If an application requires ~~more than minor major~~ relief, which includes ~~an accommodation variance,~~ conditional uses, expansions or substitutions nonconforming uses, major area variances, hillside reviews, ~~stream corridor overlay reviews,~~ urban design overlay reviews, ~~or use~~ variances, ~~or use permit (FBC only);~~ then the applicant shall petition

the Zoning Hearing Examiner, or "ZHE". The ZHE shall make a determination on the petition in accordance with Sec. 1751-4 below.

C. Historic

If an application requires a certificate of appropriateness for the alteration or demolition of a historic asset, then the applicant shall petition the Historic Conservation Board, or "HCB". The HCB shall make a determination on the petition in accordance with 1751-5 below.

If the application is for real property involving a Historic Asset or a Non-Contributing Structure located in a Historic District, then the Historic Conservation Board shall act as the Zoning Hearing Examiner for those approvals otherwise requiring ZHE review in accordance with Sec.1707-1 and shall be subject to the historic preservation regulations set forth in Sec. 1707-1.

D. Appeals

All decisions under this Section ~~1707-2(a)~~ may be appealed to the Zoning Board of Appeals or, "ZBA" in accordance with Sec. 1751-6 below.

E. Interim Development Control Overlay Districts and Planned Development Districts

If an application is for real property in an Interim Development Control District, the applicant shall apply to the City Planning Commission for review in accordance with Sec. 1707-5 and 1703-8.

1751-2.2. ~~What types of legislative relief are available?~~Legislative Relief

If an applicant desires to comply with the LDC by seeking an amendment to the zoning map, an amendment to the ~~text of the~~ LDC, or other legislative relief, then the applicant shall apply to the City Planning Commission in accordance with CMC 111, ~~and the rules of the City Planning Commission.~~

1751-2.3. ~~How do I apply for relief?~~Applying for Relief

- A. To obtain an administrative review by the Director, the ZHE, the HCB, the ZBA, or the CPC, an applicant must submit a complete application to Department. The application must comply with all directions on the application form and attach all materials required by the application form.
- B. Department staff will determine whether an application is complete. If it is not, Department staff will notify the applicant in writing, specifying the deficiencies of the application, including any additional information that must be supplied, and specifying that no further action will be taken on the application until the deficiencies are corrected. The applicant has 30 days from the date of the notification to correct the specific deficiencies. If the applicant does not correct the deficiencies within that time period, the application will ~~expire, be~~ deemed withdrawn.
- C. The Director may grant extensions of the 30 day time limit for the remedying of deficiencies for good cause shown, and without any notice or hearing, provided the request is submitted in writing before the 30 day time limit has expired.~~on written request, may for good cause shown and without any notice or hearing, grant extensions of the 30 day time limit for the remedying of deficiencies.~~

1751-2.4. Effect, Limitations and Revocation of Relief

- A. The grant of relief may be relied upon for the preparation, filing and processing of applications for permits and approvals, but it does not authorize the establishment or extension of any use or the development, construction, reconstruction, alteration or moving of any building or structure.
- B. A permit for construction or the use of land or buildings for which an approval has been granted must be obtained within two years from the date of the decision granting the approval, unless the decision specifically provides a different time frame.

- C. Prior to the expiration of the two-year period, the applicant may submit a written request to the Director for an extension of the decision. If the Director determines that the approval is still in compliance with all applicable codes, the decision may be extended for one additional period of one year. Any further extension requires the approval of the decision making body that granted the approval following a public hearing thereon. Violation of any condition or limitation on the granting of relief is a violation of the LDC and constitutes grounds for revocation of the relief.

Sec. 1751-3. Director Actions

- A. The Director has the authority and the discretion to make all administrative decisions under the LDC not otherwise expressly provided to another administrative official, decision-making body or commission. The Director is specifically authorized to determine whether a use is permitted or conditional, and to approve minor area variances, reasonable accommodations, multiple principal uses and/or structures on a lot, certificates of compliance, building permits and certificates of occupancy and use.
- B. The Director shall make all administrative decisions in the best interest and in the furtherance of the general health, safety and welfare of the people of the City of Cincinnati, and in furtherance of the purposes and intent of the LDC and any other applicable codes. The Director's determination may be relied upon by the applicant in the preparation, filing and processing of applications for approvals and permits required by the LDC or any other applicable code or law; provided, however, that a determination of use is not a guarantee of the approval or issuance of an approval or permit or any other permits for which a separate determination has not been issued, even if the other work is similar in character to the work for which the determination
- was made. The Director may approve, deny, or approve with conditions any decision authorized herein.
- C. The Director may make a written determination on an application for minor relief without a public hearing, or the Director may refer the application, or any part thereof, to the Zoning Hearing Examiner for a public hearing in accordance with Section 1751-4 below; provided, however, the Director may not refer decisions on applications for a use determination or a reasonable accommodation to the Zoning Hearing Examiner.
- D. Notwithstanding anything contained herein, the Director shall not allow multiple principle uses and/or structures on any lot in a single-family residential district.
- E. The following chart describes those persons with standing to make application to the Director, those entitled to receive notice, the timeframe for providing any notice and issuing a decision, and any right to appeal a decision.

Director: Application Requirements

Persons with Standing to Submit An Application

The Property Owner; The Applicant

Persons Entitled to Notice By Mail

The Property Owner; The Applicant; The Community Council; and Interested Persons

Right to Appeal a Written Decision

The Property Owner; The Applicant; The Community Council; and Interested Persons

- F. The following chart describes the factors the Director must consider in making a decision and the burden of proof that the Property Owner or Applicant must meet to obtain the relief requested:

Determination Request	Factors Considered	Burden of Proof
<u>Minor Area Variance</u>	<u>Those factors considered by the Zoning Hearing Examiner when reviewing a major area variance as set forth in Section 1751-4 below</u>	<u>Demonstrate that the factors weigh in favor of approval by a preponderance of the evidence</u>
<u>Reasonable Accommodation</u>	<ol style="list-style-type: none"> <u>1. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by a person with disabilities protected under applicable fair housing laws;</u> <u>2. Whether the requested accommodation is necessary to make housing available to a person with disabilities protected under applicable fair housing laws;</u> <u>3. Whether the requested accommodation would impose an undue financial or administrative burden on the City; and</u> <u>4. Whether the requested accommodation would require a fundamental alteration in the nature of the City's land use, zoning or building program or comprehensive plan.</u> 	<u>Demonstrate that the factors weigh in favor of approval by a preponderance of the evidence</u>
<u>Use Determination</u>	<ol style="list-style-type: none"> <u>1. Consistency with the general spirit and intent of the LDC and the district in which the property is located, and consistency with the city's comprehensive plan and other plans adopted by the City Council;</u> <u>2. The interest of the public health, safety and welfare.</u> 	<u>Provide sufficient evidence so that the Director can make a determination</u>
<u>Multiple Principle Uses / Structures on a Lot</u>	<ol style="list-style-type: none"> <u>1. Consistency with the general spirit and intent of the LDC and the district in which the property is located, and consistency with the city's comprehensive plan and other plans adopted by the City Council;</u> <u>2. The interest of the public health, safety and welfare.</u> 	<u>Provide sufficient evidence so that the Director can make a determination</u>

G. The following approvals shall be considered Minor Area Variances:

Minor Area Variances Table: All Districts	
Area Variance Type	Area Variance Permitted
Generally	
Modifications to any numerical or dimensional regulations, except when a specific modification to the regulation is provided in this table.	20% max.
Lot Dimensions	
Depth. A lot may be shallower the minimum lot depth.	30% max.
Width. A lot may be wider than the maximum lot width.	20% max.
Setbacks/Build-to Line	
Front, Side Street, Side or Rear. An increase or decrease of the minimum required setback areas (e.g., front, side street, side, and rear) for principal structures.	5' or 40%, whichever is less. ¹
Front or Side. A relaxation of the specified build-to-line.	2' max.
Defined by a Building. A relaxation of the specified build-to-line, defined by the building façade.	10% max.
Facade within Façade Zone. A relaxation of the specified front façade requirements for sites located within Transect Zones.	10% max.
Double-frontage lots. A determination that one of the yards functions as a front yard and other yards function as side and rear yards.	Yards are subject to setbacks prescribed for front, side, and rear yards.
Setbacks	
Additions to Existing Non-Conforming Structure. Allow an addition to an existing structure to be located up to the furthest point of setback encroachment, subject to building code regulations.	Up to existing encroachment ¹
Existing Site Features. Allow buildings to be placed closer or further from a parcel line due to existing site features, like trees, rocks, etc.	10% max.
Lot Size	
Lot Dimensions. A decrease in the minimum required parcel area, parcel depth, or parcel width.	10% max.
Lot Dimensions. An increase in the maximum parcel area, parcel depth, or parcel width.	10% max.
Site Improvements	
Fences/Walls. An increase to the height of fences and walls in all districts except residential districts.	2' max.
Fences/Walls. The addition of barbed wire and razor wire to fences in all districts except residential districts.	May not add more than 1' to total fence height.
¹ Requirement for a private frontage shall still apply, and any variation shall not preclude the use of a private frontage.	

Minor Area Variances Table: Form-Based Districts Only

Area Variance Type	Area Variance Permitted
Block Face	
Block Face and Perimeter Length	20% max.
Building Form	
Building Height. Building height may increase.	Additional floor in height on downslope side of lot. ¹
Building Height. Ground floor finish level above street centerline may decrease.	Finished floor level may be reduced to be even with the finished grade.
Site Grading	
Site Grading. Grading of a site to require retaining walls taller than 4' in height.	Allows placement of retaining walls taller than 4' in height.
Site Grading. Grading of a site to require retaining walls on rear and side property lines.	Allows placement of retaining wall on rear or side property line.
Parking Location	
Front Setback. On steeply sloped lots wider than 35 feet, parking spaces may be located under the main building if the following findings are true.	Reduction in the Parking location Front Setback to equal the Main Building Front setback.
Front Setback. On steeply sloped lots less than 35 feet wide, parking spaces may be located under the main building if the following findings are true.	Reduction in the Parking location Front Setback to equal the Main Building Front setback.
Building Placement	
Facade within Facade Zone in Transect Zones. A relaxation in the amount of the street facing facade that is located within the facade zone,	10% max.
Build-to Line Defined by Facades in Transect Zones. A relaxation in the amount of the street facing facade that is located at the Build-to Line.	10% max.
Parking	
Minimum Parking Requirement. No off-street parking shall be required for renovations or new construction on lots 30' wide or less.	No off-street parking required.
Build-to Line Defined by Facades in Transect Zones. A relaxation in the amount of the street facing facade that is located at the Build-to Line.	10% max.
¹ Requirement for a private frontage shall still apply, and any variation shall not preclude the use of a private frontage.	

1751-3.1. Reasonable Accommodations

- A. The Director has the authority to provide persons with disabilities or developers of housing for people with disabilities flexibility in the application of land use, zoning and building regulations, policies, practices and procedures, which include waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities. A request for reasonable accommodation may be made by any person with a disability, his or her representative, or a developer or provider of housing for persons with disabilities, when the application of a land use, zoning or building regulation, policy, practice or procedure acts as a barrier to fair housing opportunities. The Director shall apply the factors set forth in 1751-3(F) when considering a reasonable accommodation request.

While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the subject property shall remain in full force and effect. If granted, a reasonable accommodation applies only to the regulation, policy, or procedure for which accommodation is granted. A reasonable accommodation does not affect, waive, or otherwise excuse compliance with all other applicable regulations not at issue in the requested accommodation.

1751-3.2. Building Permits and Certificates of Occupancy and Use

- A. A building permit or Certificate of Occupancy and Use may not be issued for any building or use that would require access across a zoning district prohibiting the use. For the purposes of the LDC, access to a use is deemed the use.
- B. Submission of a complete application for a building permit vests the applicant the right to construct the work for which the permit was issued in accordance with the provisions of the LDC in effect at the time of

application. That right expires with the expiration of the building permit application or building permit or subsequently issued, whichever occurs first.

- C. The Director may issue a Certificate of Occupancy and Use on finding that a use conforms to the provisions of the LDC, any written decision from a decision making body, and any final judgment of a court of competent jurisdiction.
- D. The Director may grant temporary and conditional permits for the use of buildings and land for seasonal events to terminate at a date specified in the permit, not to exceed 30 days from the date of the permit.
- E. The Director may grant temporary and conditional permits for parking lots to terminate at a date specified in the permit, not to exceed two years from the date of the permit, provided that the parking lot use is clearly interim to the future re-use plans of the area involved. On written request, the Director may renew these permits as reasonable.

Sec. 1751-4. Public Hearings

- A. The ZHE, the HCB, the ZBA, and the CPC must hold a public hearing with 60 days of ~~its~~ the Department's receipt of a complete application unless the hearing is waived in the manner described below.
- B. Notice of the hearing must be published in the City Bulletin and must be sent to all persons entitled to notice by regular mail. Those persons may include:
1. **The Property Owner**
The owner of the subject property.
 2. **The Applicant**
The Property Owner or a person authorized by the Property Owner to submit an application on its behalf.
 3. **The Community Council(s)**
The community council(s) recognized by the City Council as having an interest in zoning matters in the community in which the subject property is located.
 4. **Interested Persons**
The owners of all properties located within a specified radius of the subject property, when applicable; the owners of all properties abutting the subject property not owned by the Property Owner; and any person who requests notice of the hearing-an application.
 5. **Persons Affected**
In the case of a hearing before the ZHE or HCB, any person who asserts they are substantially affected by the relief requested by the Property Owner; and, in the case of a hearing before the ZBA, any person who asserts they are substantially affected by a final decision of the Director, or a final decision of the ZHE or HCB and who expressed in writing a position prior to, or testified at, the hearing before the ZHE or HCB.
- C. The hearings shall be conducted pursuant to the rules of procedure established by the decision-making body. All rules of procedures must provide that the Property Owner, the Applicant, the Community Council, all Interested Persons, and all Persons Affected have an opportunity to speak at the hearing and submit evidence in the case of de novo hearings, and they must provide for the right of cross-examination in accordance with Cincinnati Municipal Code 113-11.
- D. A decision-making body may require the attendance of witnesses, the production of records and papers, and the deposition. Testimony submitted to a decision making body shall be under oath and recorded by stenographic or mechanical means.
- E. The decision-making body must make a final decision on an application within the prescribed time period following the close of the hearing on the application. The decision-making body may impose on its decision any conditions it deems necessary to ~~protect~~ provide for the public health, safety, and general welfare. The decision must be reduced to writing and mailed to the Applicant.
- F. For applications requesting relief from a numerical, dimensional, or locational LDC regulation, the decision-making body may waive the public hearing requirement provided that the Applicant or the Property Owner obtains the written consent of the owners of all properties abutting the subject property and the Community Council(s). The written consent of the Community Council(s) shall not be required if it is not active. Notwithstanding the foregoing, the decision-making body may not waive the public hearing requirement for applications related to the use of real property or concerning regulations established under an overlay district including Historic District regulations.

Sec. 1751-5. Zoning Hearing Examiner (ZHE)

- A. The ZHE is authorized to approve **Accommodation Variances**, Conditional Uses, Expansions or Substitutions of Nonconforming Uses, Major Area Variances, **Use Permits**, and Use Variances. The ZHE also conducts reviews for certain development in Hillside, **Stream Corridor overlay**, and Urban Design overlay districts.
- B. The following chart describes those persons with standing to make application to the ZHE, those entitled to receive notice of a hearing, and the timeframe for providing notice and issuing a decision:

Zoning Hearing Examiner: Application Requirements	
Persons with Standing to Submit An Application	The Property Owner; The Applicant
Persons Entitled to Notice By Mail	The Property Owner; The Applicant; The Community Council(s); All Interested Persons within 250 feet of the subject property when located in an SF-10 or SF-20 Zoning District and within 100 feet of the subject property when located in any other district
Minimum Notice Period for Notice By Mail	14 days in advance of the public hearing
Minimum Notice Period for Notice By Publication	7 days in advance of the public hearing
Maximum Time for Issuance of a Decision Following a Hearing	10 days following the close of the public hearing

- C. The following chart describes the factors the ZHE must consider in making its decision and the burden of proof that the Property Owner or Applicant must meet to obtain the relief requested:

Zoning Hearing Examiner: Decision Factors		
Relief Requested	Factors Considered	Burden of Proof
Conditional Use Use-Permit Expansion or Substitution of Nonconforming Use	<ol style="list-style-type: none"> 1. Consistency with the purposes of the LDC and the district in which the property is located, and consistency with the city's comprehensive plan and other plans adopted by the City Council; 2. Compatibility with the use and development of neighboring properties in accordance with applicable district regulations; 3. Impact on the neighborhood's character and property values, and impact on the public's health, safety, and general welfare; and 4. Compliance with other standards imposed by the LDC including standards specific to the use. 5. <u>In the case of a request to expand or substitute a nonconforming use, whether the nonconforming use is located in an existing structure or on a lot that is specifically equipped or designed to accommodate the nonconforming use.</u> 	Demonstrate that the factors weigh in favor of approval by a preponderance of the evidence
Major Area Variance Expansion or Substitution of Nonconforming Use	<ol style="list-style-type: none"> 1. Consistency with the purposes of the LDC and the district in which the property is located, and consistency with the city's comprehensive plan and other plans adopted by the City Council; 2. Origination from a condition that is unique to the property at issue and not ordinarily found in the same zone or district; 3. Ability to realize a reasonable return or beneficial use of the property without a variance; 4. Whether the request is substantial; 5. Impact on<u>Whether the</u> essential character of the neighborhood would be substantially altered, and whether adjoining properties would suffer a substantial detriment as a result of the variance; 6. Impact on the delivery of governmental services, like water, sewer, and garbage collection; 7. Extent of the property owner's knowledge of the zoning restriction upon purchase of the property; 8. Feasibility of obviating the property owner's predicament by some method other than a variance; and 9. Extent to which the spirit and intent behind the zoning requirement is observed and substantial justice done by granting the variance. 	Demonstrate that the factors weigh in favor of approval by a preponderance of the evidence

Zoning Hearing Examiner: Decision Factors (Continued)		
Relief Requested	Factors Considered	Burden of Proof
Use Variances	<ol style="list-style-type: none"> 1. Consistency with the general spirit and intent of the LDC and the district in which the property is located, and consistency with the city's comprehensive plan and other plans adopted by the City Council; 2. Inability to put the property to any economically viable use under any of the permitted uses in the zoning district; 3. Existence of a hardship condition not created by the property owner or the property owner's predecessor-in-interest; 4. Hardship stems from a condition unique to the property at issue and not ordinarily found in the same zone or district; 5. No unreasonably adverse impact on the rights of adjacent property owners or residents; 6. No unreasonably adverse impact on the community character, public health, safety or general welfare; 7. Minimum relief necessary to afford relief to the applicant. 	Demonstrate all factors are met by clear and convincing evidence

- D. The following chart describes the guidelines the ZHE must consider in making its decision and the burden of proof that the Property Owner or Applicant must meet:

Zoning Hearing Examiner: Guidelines		
Overlay District	Guidelines Considered	Burden of Proof
Hillside Review	Hillside Development Guidelines (Sec. 1707-2)	Demonstrate that the factors weigh in favor of approval by a preponderance of the evidence
Stream Corridor	Stream Corridor Setback Overlay Guidelines (Sec. 1707-3)	Demonstrate that the development substantially conforms to the guidelines by a preponderance of the evidence
Urban Design	Urban Design Overlay District Development Standards (Sec. 1707-4)	Demonstrate that the development substantially conforms to the guidelines by a preponderance of the evidence

Sec. 1751-6. Historic Conservation Board

- A. The HCB conducts reviews for development in all Historic districts and development affecting Historic Assets.
- B. The following chart describes those persons with standing to make application to the HCB, those entitled to receive notice of a hearing, and the timeframe for providing notice and issuing a decision:

Historic Conservation Board: Application Requirements	
Persons with Standing to Submit An Application	The Property Owner; The Applicant
Persons Entitled to Notice By Mail	The Property Owner; The Applicant; The Community Council(s); All Interested Persons within 200 feet of the subject property
Minimum Notice Period for Notice By Mail	7 14 days in advance of the public hearing
Minimum Notice Period for Notice By Publication	7 days in advance of the public hearing
Maximum Time For Issuance of A Decision Following A Hearing	10 days following the close of the public hearing

- C. The following chart references the standards the HCB must consider in making its decision and the burden of proof that the Property Owner or Applicant must meet:

Historic Conservation Board: Decision Factors		
Relief Requested	Factors Considered	Burden of Proof
Certificate of Appropriateness (Alterations)	The proposed development substantially conforms to the conservation guidelines that govern the Historic District or Historic Asset at issue	Demonstrate by credible evidence
Certificate of Appropriateness (Demolitions)	<ol style="list-style-type: none"> Whether the Property Owner will suffer economic hardship if the certificate of appropriateness is not approved, <u>with consideration of the following factors:</u> <ol style="list-style-type: none"> Will all economically viable use of the property be deprived without approval of a Certificate of Appropriateness; Will the reasonable investment-backed expectations of the property owner be maintained without approval of a Certificate of Appropriateness; and Whether the economic hardship was created or exacerbated by the Property Owner. In evaluating the above factors for economic hardship, the Historic Conservation Board may consider any or all of the following: <ol style="list-style-type: none"> A property's current level of economic return; Any listing of property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents; The feasibility of alternative uses for the property that could earn a reasonable economic return; Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property; Knowledge of landmark designation or potential designation at time of acquisition; and/or Economic incentives and/or funding available to the applicant through federal, state, city, or private programs. 	Demonstrate by credible evidence

Sec. 1751-7. Zoning Board of Appeals

- A. Any party with standing may appeal a final decision of the Director, and any final administrative decision made by a decision-making body under the LDC to the Zoning Board of Appeals within 30 days of the mailing of the decision.
- B. The Director may stay enforcement of an order, adjudication, or decision made pursuant the the LDC during the pendency of an appeal to the Zoning Board of Appeals concerning the subject matter of the order, adjudication, or decision. A stay aproved under this section shall expire 30 days following the mailing of the ZBA's decision if not terminated earlier by the Director.
- C. Any party with standing may appeal any decision of the Director, Zoning Hearing Examiner, or any other decision of a decision-making body under this Code to the Zoning Board of Appeals within 30 days after the date of the decision:
- D. The following chart describes those persons with standing to make application to the ZBA, those entitled to receive notice of a hearing, and the timeframe for providing notice and issuing a decision:

Zoning Board of Appeals: Application Requirements

Persons with Standing to Submit An Application	The Property Owner; The Applicant; The Community Council(s); Persons Affected
Persons Entitled to Notice By Mail	The Property Owner; The Applicant; The Community Council(s); Persons Affected
Minimum Notice Period for Notice By Mail	14 days in advance of the public hearing
Minimum Notice Period for Notice By Publication	<u>6 7</u> days in advance of the public hearing
Maximum Time For Issuance of A Decision Following A Hearing	<u>A reasonable period following the close of the public hearing 30 days following the close of the public hearing</u>

- E. The following chart describes the standards the ZBA must consider in making its decision and the burden of proof that the appellatant must meet to obtain the relief requested:

Zoning Board of Appeals: Decision Factors

Relief Requested	Factors Considered	Burden of Proof
Challenge to Administrative Decision	The order, adjudication, or decision is illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record.	Demonstrate by credible evidence

Sec. 1751-8. Nonconformities

1751-8.1. Purpose

This Section–

- A. provides for the maintenance and development of uses, structures, lots, and site improvements that were lawfully established prior to the effective date of the LDC and do not comply with the LDC's regulations;
- B. establishes reasonable standards in order to minimize their impact on neighborhoods and the City; and
- C. balances the expectations of property owners with the goals and objectives of Plan Cincinnati and the LDC.

1751-8.2. Applicability

- A. This Section applies to all nonconformities.
- B. "Nonconformity" means a use, structure, lot, or site improvement that:
 - 1. was lawfully established before the effective date of the LDC or an amendment to the LDC; and
 - 2. is no longer permitted in the zoning district in which it is located by operation of the LDC or an amendment to the LDC.
- C. Nonconformities may be individually referred to as "nonconforming uses," "nonconforming structures," "nonconforming lots," or "nonconforming site improvements."
- D. "Effective Date" means the effective date of the LDC or an LDC amendment that creates the nonconformity at issue.

1751-8.3. Continuation of Nonconformities

A. Continuation

Subject to the standards and limitations in this Section, a nonconformity may be continued following the Effective Date.

B. Abandonment of Nonconformity

- 1. An abandoned nonconformity may not be reestablished or resumed.
- 2. "Abandoned" means the voluntary discontinuance of a nonconforming use for a period of 365 consecutive days, or the voluntary removal or destruction of a nonconforming structure or nonconforming site improvement.
- 3. A period of abandonment caused by government action, without any contributing fault by the ~~nonconformity's~~ owner or person in control of the nonconformity, is not considered in determining the period of abandonment.
- 4. Removal or destruction of a structure or site improvement caused by government action, without any contributing fault by the ~~nonconformity's~~ owner or person in control of the nonconformity, is not considered a voluntary removal or destruction.

C. Reestablishment and Reconstruction of Nonconformities

A nonconformity destroyed by a fire, accidental explosion, accidental collision, wind storm, snow, collapse, flood, vandalism, or other events or natural calamities outside of the control of the ~~property~~ owner or person in control of the nonconformity may be reestablished or reconstructed if the reestablishment or reconstruction does not create any new nonconformity or increase the degree of the nonconformity as it existed prior to the force majeure event. Examples of situations that are not outside ~~the property's~~ a person's control include changes in economic market conditions or delays in financing.

1751-8.4. Maintenance, Repair, Restoration, and Alteration of Nonconformities

All nonconformities may be maintained, repaired, restored, and altered if the maintenance, repair, restoration, or alteration does not create any new nonconformity or increase the degree of ~~the~~ an existing nonconformity.

1751-8.5. Expansion and Substitution of Nonconformities

- A. A nonconforming use may be expanded or substituted if it meets the criteria for conditional uses under Sec. 1751-5.C; ~~provided, however, a nonconforming use may only be expanded or substituted if it is located in an existing structure or on a lot that is specifically equipped or designed to accommodate the nonconforming use.~~
- B. Underlying zoning district regulations may only be substituted for less restrictive zoning district regulations as set forth in the following table:

Location of Nonconformity	Substitution Rights
SF-20	None
SF-10	None
SF-6	None
SF-4	None
SF-2	None
RMX	RM-L
RM-M	RM-H
RM-H	RX
RX	NX
NX	CX
CX	CA
CA	IX
DD	None
IX	IH
IH	None
RF-R	RF-C
RF-C	RF-M
RF-M	None
IR	None

1751-8.6. Specific to Nonconforming Lots

A. Applicability

- ~~This section applies specifically to any undeveloped nonconforming lot.—~~
- ~~A lot is “undeveloped” if it has no substantial structures upon it. A substantial structure includes any structure that occupies at least 50% of the lot or 800 square feet in floor area. If the lot is developed, requirements of Sec. 1751-8.4 apply.~~
- ~~A change in use of a developed nonconforming lot may be accomplished only in accordance with Sec. 1751-8.5.~~

B. Use of Nonconforming Lot

~~A nonconforming lot may be used for any permitted use in the underlying zoning district if all other requirements of this section are met.~~

C. Setback Nonconformity

~~When the use proposed for a nonconforming lot conforms to all dimensional standards except the applicable setback requirements, the Zoning Administrator/Director may grant a dimensional variance if the standards for a dimensional variance apply (see Section 1708-4).~~

1751-8.7. Specific to Nonconforming Site Improvements

A. Applicability

- ~~This section applies to nonconforming site improvements.—~~
- ~~This section does not apply to minor repairs and renovations (less than 10% of the structural value of a structure or site improvements), or repairs or alterations pursuant to Sec. 1751-8.4.~~

B. Generally

~~On lots with nonconforming site improvements, no additions to, or repairs or alterations of any structure or site improvement are allowed permitted unless:~~

1. ~~The nonconforming site improvements are brought into complete conformity with the current regulations; or~~
2. ~~The Zoning Administrator-Director approves a dimensional variance for the activity (Section 1708-4).~~

Sec. 1751-9. Enforcement and Penalties

1751-9.1. ~~What is considered a violation of the LDC? Violations of the LDC~~

The following are considered violations of this LDC:

- A. Establishing a use or building type that is ~~inconsistent with those allowed-permitted~~ in the applicable zoning district. ~~or transect zone.~~
- B. Building a structure (including any building or parking area) in a way that ~~is inconsistent with a dimensional standard; violates the LDC's development regulations or use standards.~~
- C. Failing to install improvements, encroachments, or infrastructure that is required by ~~this Code the LDC.~~
- D. Installing improvements, encroachments, or infrastructure that does not comply with ~~this Code the LDC.~~
- E. Building Uses or development that occur without all required permits, approvals or permissions;
- F. Building Uses or development that do not comply with any other applicable condition or requirement of ~~this Code the LDC.~~
- G. Establishing a use or structure that does not comply with any condition or limitation imposed on an administrative order, adjudication, or decision, on a variance, special exception or conditional use (this is grounds to revoke the variance, special exception or conditional use); or other permit, certificate, or covenant to the city, made pursuant to the LDC, or
- H. Otherwise failing to conform to any provision of this LDC or any permit, permission or approval required by the LDC.

1751-9.2. ~~Who enforces the LDC? Enforcement of the LDC~~

The Director is authorized to enforce the LDC. The Director may inspect all properties for compliance with the LDC or any conditions of approval when necessary to assure continued compliance.

1751-9.3. ~~What actions may the Director take if a violation is found? Director Enforcement~~

A. Director Discretion

The Director is authorized to take the following actions to enforce compliance with the LDC:

1. Order compliance with the LDC.
2. Revoke a permit, approval, or permission that does not comply with the LDC.
3. Order the stoppage of work that does not comply with the LDC.
4. Order vacation or a premissis or portion of a premissis found to be in violation of the LDC.
5. Cite a person found to be in violation of the LDC or a lawful order of the Director with a civil offense pursuant to Title XV, Code Compliance and Hearings, of the Cincinnati Municipal Code.
6. Cite a person found to be in violation of the LDC or a lawful order of the Director with a criminal offense. The first criminal offense shall be a misdemeanor of the third degree and any subsequent offense shall be a misdemeanor of the first degree.
7. Apply to the City Solicitor to institute civil proceedings pursuant to Sec.1501-27, Civil Proceedings, of the Cincinnati Municipal Code.
8. Take any other enforcement action available in law or equity.

~~has the discretion to pursue compliance with the LDC through permit revocation, issuance of an order to comply, vacation of a premises or portion of a premises found to be in violation, criminal prosecution, issuance of a notice of civil offense pursuant to Title XV, Code Compliance and Hearings, of the Cincinnati Municipal Code, or application to the City Solicitor to institute proceedings pursuant to ????, Remedies.~~

B. Continuing violations

1. ~~The Director may issue a citation for a separate offense, for each day that a violation continues or in which there is a failure to comply with an order, adjudication, or decision made under the LDC.~~

C. Adjudication orders required

1. When the Director ~~takes any action provided for in Section A above, the action shall be initiated by denies any approval or takes action in response to findings of non-compliance, such action shall be initiated by~~ issuing an adjudication order; ~~provided, however, the Director may apply to the City Solicitor to institute civil proceedings to enforce violations of the LDC that present imminent threats to the public health, safety and welfare without first issuing an adjudication order, prior to seeking any remedy, civil or criminal.~~
2. Every adjudication order shall:
 - a. Clearly identify the section of law or rules violated;
 - b. Specifically indicate which detail, installation, site preparation, material, appliance, device, addition, alteration to structures, construction documents, change of use, assemblages or procedures are necessary to change to comply with the order;
 - c. When issued to stop work, the order shall also clearly indicate the specific work that is required to cease, when the work must cease and the conditions under which the

cited work will be permitted to resume. The order to stop work shall be given to the owner of the property involved, to the owner's agent and the person doing the work.

- d. Include notice of the procedure for appeal and right to a hearing if requested within 30 days of the mailing of the order. The order shall also indicate that, at the hearing, the owner may be represented by counsel, present arguments or contentions orally or in writing, and present evidence and examine witnesses appearing for or against the owner;
 - e. Specify a reasonable period of time in which to bring the item(s) on the order into compliance;
 - f. Include the signature of the Director;
3. The order shall be sent by certified mail, return receipt requested, to the owner and any individual designated as a representative or agent by the owner in such matters.

D. Response to Orders

The person receiving an order shall exercise their right to appeal within 30 days of the mailing of the order, comply with the order, or otherwise be released from the order by the Director.

E. Prosecution and Penalties

~~When an owner~~ Any person who fails to comply with ~~a final adjudication order paragraph C above,~~ may be prosecuted and is subject to the remedies provided in ~~this Chapter.~~

F. Unlawful ContinuancePublic Nuisance

~~Failure to cease work after receipt of an order to stop work~~ Any violation of the LDC or a lawful order of the Director is hereby declared a public nuisance.

1751-9.4. How do I appeal an enforcement order?

~~Adjudication hearings shall be in accordance with Sec. 1751-3 above and the following:~~

- A. Requests for hearing shall be within 30 days of the mailing date of an adjudication order.
- B. The Zoning Board of Appeals shall schedule a hearing and notify the party.
- C. Notice of the hearing is given as provided in Sec. 1751-6.
- D. For purposes of conducting adjudication hearings, the Zoning Board of Appeals may require attendance of witnesses, production of records and papers, and may take depositions of witnesses in accordance with ORC section 119.09.
- E. Testimony shall be under oath and, as outlined in section 109.1, a stenographic or mechanical record of testimony and other evidence submitted shall be taken at the expense of the Zoning Board of Appeals.
- F. The Zoning Board of Appeals may postpone or continue any adjudication hearing on its own motion or upon the application of any party.
- G. The Zoning Board of Appeals shall keep a full and complete record of all proceedings which shall be open to public inspection.
- H. The Zoning Board of Appeals shall render its decision within thirty days after the hearing.
- I. Following the hearing, an order shall be entered on its journal, and the Zoning Board of Appeals shall serve by certified mail, return receipt requested, upon the party affected thereby, a certified copy of the order and a statement of the time and method by which an appeal may be perfected. A copy of the order shall be mailed to the attorney or other representatives of record representing the party.
- J. Any City officer or official, or person who was a party to the hearing before the Zoning Board of Appeals, may appeal to the court of common pleas of Hamilton County.

1751-9.5. What remedies are available to the City?

If the Director, or any other officer charged with enforcing the LDC, is satisfied that any provision of this Code is violated or about to be violated in any respect, or that any order or direction to enforce this Code not complied with, the Director or the official may choose either of the following:

- A. If the Director is satisfied that civil proceedings are necessary to enforce the code, the Director shall apply to the City Solicitor, who is authorized to institute civil proceedings.
- B. If a building or structure is or is intended to be erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is or is intended to be used, in violation of this Code, the City Solicitor, in addition to the remedies provided in this Chapter, may institute any appropriate action in law or equity to prevent the unlawful act, or to restrain, correct or abate the violation.
- C. The actions authorized by this section are in addition to those authorized by Sec. 1751-8.6.

1751-9.6. What are the penalties for a violation?

- A. Whoever violates the LDC or fails to obey any lawful order of the Director issued to enforce the LDC, is guilty of a misdemeanor of the third degree on the first offense and guilty of a misdemeanor of the first degree on the second and subsequent offense. Each day's continuation of a violation or failure to comply is a separate offense. This section does not apply to Sec. 1707-1. Historic Preservation.
- B. As an alternative to criminal prosecution, the Director may cite a person who violates any provision of this LDC or fails to obey any lawful order of the Director issued to enforce this LDC, for a civil offense pursuant to Title XV, Code Compliance and Hearings, of the Cincinnati Municipal Code.

1751-9.7. Special rules for Historic Assets

~~A person may not cause, whether by neglect or willful action or inaction:~~

A. ~~Alteration, Demolition or Environmental Change~~

~~A person may not cause, whether by neglect or willful action or inaction, an alteration of or environmental change or demolition affecting a historic structure or a historic site or district without first having obtained a certificate of appropriateness for the alteration, demolition or environmental change.~~

B. ~~Care, Maintenance and Upkeep~~

~~A person may not, whether by neglect or willful action or inaction, fail to provide reasonable care, maintenance and upkeep appropriate for the preservation, protection, enhancement, rehabilitation, perpetuation or use in compliance with the terms of [Sec. 1707-1](#).~~

C. ~~A person who causes, whether by neglect or willful action or inaction, an alteration of or environmental change or demolition affecting a historic landmark or a historic site within a historic district in violation of [Sec. 1707-1](#) shall restore the structure or property to its appearance as the Historic Conservation Board may approve.~~

~~enforce this section. This civil remedy is in addition to and not in lieu of a criminal prosecution and penalty or civil prosecution and penalty pursuant to Title XV, Code Compliance and Hearings, of the Cincinnati Municipal Code.~~

- ~~C. Whoever violates any provision of [Sec. 1707-1](#), or fails to conform to any provision of that section or fails to obey any lawful order of the Director issued to enforce that section, is guilty of a misdemeanor of the first degree. Each day's continuation of a violation or failure to comply is a separate offense.~~
- ~~D. As an alternative to criminal prosecution, the Director may cite a person who violates [Sec. 1707-1](#), or fails to conform to any provision of that section or fails to obey any lawful order of the Director issued to enforce that section, for a civil offense pursuant to Title XV, Code Compliance and Hearings, of the Cincinnati Municipal Code.~~
- ~~E. A person who owns, or who is the owner's agent or has control of, a historic property or structure located within an historic site or district, which violates a provision of [Sec. 1707-1](#), is guilty of a misdemeanor of the first degree. Each and every day that a person continues to violate the provisions of [Sec. 1707-1](#), after receiving notice of the violation, is a separate offense.~~

1751-9.8. ~~What remedies does the City have for a violation regarding an Historic Asset?~~

- ~~A. The City Solicitor may bring a civil action, whether equitable or legal, as needed to enforce [Sec. 1707-1](#). Historic Preservation.~~
- ~~B. A person who causes, whether by neglect or willful action or inaction, an alteration of or environmental change or demolition affecting a historic landmark or a historic site within a historic district in violation of [Sec. 1707-1](#) shall restore the structure or property to its appearance as the Historic Conservation Board may approve. The City Solicitor may bring actions to~~